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but, in the absence of statutory requirement, such assent need not be shown by a formal vote nor by entry in the minutes of a directors' meeting.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 564.]

11. Corporations (§ 426 (10)*)—Ratifies Contract by Accepting Benefits.—A corporation, by accepting the benefits of a contract, ratifies the contract and waives any informalities in its execution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 567.]

12. Contracts (§ 108 (2)*)—Contract to Pay Reasonable Amount for Services in Financing Corporation Not against Public Policy.—The corporation's contract to pay a reasonable amount for services rendered in financing the corporation is not against public policy.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 373.]

13. Corporations (§ 519 (3)*)—Evidence Held to Prove Rendition of Services in Financing Corporation.—In an action against a corporation for services rendered in financing the corporation, evidence held to prove rendition of services.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 583.]

Error to Circuit Court, Campbell County.

Suit by H. L. Lane against the Altavista Cotton Mills, Incorporated. Judgment for plaintiff, and defendant brings error Affirmed in part, and reversed in part.

Volney E. Howard and *Wilson & Manson*, all of Lynchburg, for plaintiff in error.

H. L. Hale, Harrison & Long, and *Caskie & Caskie*, all of Lynchburg, for defendant in error.

POWELL v. COMMONWEALTH.

June 15, 1922.

[112 S. E. 657.]

1. Homicide (§ 319*)—Refusal to Set Aside Verdict because of Newly Discovered Evidence Held Error.—In prosecution for murder, in which the state relied on the evidence of the wife and nephew of deceased, where newly discovered evidence was to the effect that deceased's wife had committed perjury as to material facts, relating to provocation justifying the killing, in view of the fact that testimony of the nephew of deceased was to the same effect as that of deceased's wife, and was subject to influence of the wife of deceased, refusal to grant a new trial was error.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 474.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Criminal Law (§ 942 (1)*)—Rule that Newly Discovered Evidence to Secure New Trial Must Go to Merits and Not Impeach Character of Witnesses Stated.—The requirement that to secure a new trial newly discovered evidence must go to the merits of the case and not merely impeach the character of a former witness is confined to testimony to the bad character of the witness, or which tends to impeach the witness by disproving facts to which he has testified by means of evidence of other inconsistent facts, or which consists merely in showing inconsistent statements of the witness made prior to the trial and not under oath.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447.]

3. Criminal Law (§ 942 (2)*)—New Trial Granted Where Newly Discovered Evidence Goes to Destruction of Evidence of Witness on Which Verdict Was Founded.—Where newly discovered evidence consists of statements of a witness on whose testimony a conviction depended, made after the trial and under circumstances which show that they were not designed to furnish ground for a motion for new trial, and, if true, such statements are sufficient to show that the verdict was based on mistake or perjured testimony, a new trial should be granted

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447.]

4. Criminal Law (§ 938 (1)*)—If Motion Establishes Existence of Evidence Relied on to Show Perjury or Mistake and Leaves No Doubt, a New Trial Should Be Granted.—On motion for a new trial because of newly discovered evidence, if the court has evidence before it which establishes the existence of evidence relied on to show perjury or mistake in such manner as to leave no doubt as to existence of the evidence so relied on, and the court is satisfied that the evidence is not collusive, that it seems to be true, and ought, if true, to produce on another trial an opposite result on the merits, a new trial should be granted.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 447.]

5. Criminal Law (§ 938 (1)*)—If Where Perjured Testimony Is Eliminated There Is Sufficient Evidence to Support Verdict, a New Trial Will Not Be Granted for Newly Discovered Evidence.—On motion for new trial on the ground of newly discovered evidence which shows perjury or mistake, if eliminating the perjured evidence there is still other evidence sufficient to support the verdict, and the court can fairly conclude that the jury in such case would have come to the same conclusion had the perjured testimony been eliminated, a new trial will not be granted.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 449.]

Error to Circuit Court, Norfolk County.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Charles D. Powell was convicted of murder in the second degree, and he brings error. Reversed, and new trial granted.

J. L. Broudy, of Norfolk, and *Jno. W. Happer*, of Portsmouth, for the plaintiff in error.

John R. Saunders, *Atty. Gen.*, for the Commonwealth.

ATLANTIC COAST LINE R. CO. *v.* A. M. WALKUP

CO., Inc., et al.

June 15, 1922.

[112 S. E. 663.]

1. Railroads (§ 17*)—Supervising Engineer's Acts Held Binding on Companies Erecting Union Station.—Where two railroads let a contract for the construction of a union station, the work to be done under the superintendence of an engineer of one of the railroads, and each company to pay half of the cost, the action of the engineer in stopping work upon the station because of a desire to change the location and in thereafter awarding to the contractor an additional sum for the increased cost of the work due to the delay was the act of an agent of both railroad companies, so that each must pay its share of the extra compensation.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 249.]

2. Contracts (§ 301*)—Contractor May Recover for Loss from Unreasonable Delay Caused by Owner.—A building contractor may recover damages sustained by him for loss resulting from unreasonable delay on the part of the owner in permitting him to perform his contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 437.]

3. Railroads (§ 17*)—Contract for Erection of Union Station Held Not within Agent's Authority.—Knowledge by a contractor for a union railroad station, to be paid for jointly by two railroads, that the removal of the station to another site was a new contract, placed upon him the duty to ascertain the authority of the agent who authorized the removal to bind the company by which he was not employed, so that the contractor cannot recover from the latter company any portion of the cost of removal which it had expressly refused to pay for.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 250.]

4. Judgement (§ 208*)—Joint Party against Whom Judgment Was Not Rendered Held Not Entitled to Be Dismissed.—Where a contractor, who undertook the construction of a union depot to be paid for by two railroad companies, brought suit against both companies, and verdict was rendered in favor of the defendant company, whose agent had been in charge of the work, which might be liable for the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.